

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MICHAEL JOHNSON,

Plaintiff,

v.

CITY OF DURHAM, et al.,

Defendants.

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ORDER

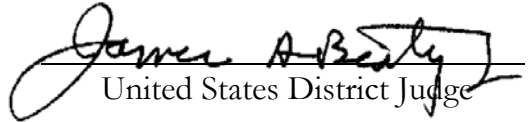
This matter is before the Court on a Recommendation of the United States Magistrate Judge recommending that Defendants' Motion to Dismiss [Doc. #5] be denied without prejudice to re-filing after Plaintiff has an opportunity to amend his Complaint. The Recommendation [Doc. #21] was filed on October 1, 2010, and notice was served on the parties pursuant to 28 U.S.C. § 636(b). No objections were filed within the time limits prescribed by § 636. The Court has appropriately reviewed the Recommendation and finds that the Recommendation should be adopted.

The Court notes, however, that Plaintiff has already filed his Amended Complaint in this case [Doc. #26], and Defendants have re-filed their Motion to Dismiss [Doc. #28] as to that Amended Complaint. Briefing as to Defendants' Motion to Dismiss [Doc. #28] is currently underway before the Magistrate Judge. As such, for administrative purposes, the Court enters this Order affirming and adopting the Magistrate Judge's Recommendation [Doc. #21] that Defendants' original Motion to Dismiss [Doc. #5] be denied without prejudice. However, this Order shall not alter or otherwise affect any other Motion currently pending before the

Magistrate Judge in this case.

IT IS THEREFORE ORDERED that Defendants' original Motion to Dismiss [Doc. #5] is DENIED without prejudice, but this Order shall not alter or otherwise affect any other Motion currently pending before the Magistrate Judge in this case.

This, the 22<sup>nd</sup> day of March, 2011.

  
United States District Judge